

Filed for intro on 01/01/99
SENATE BILL 2185 By
Springer

HOUSE BILL 2789
By Rinks

AN ACT to amend Tennessee Code Annotated, Title 62, Chapter 43, relative to the Tennessee Employee Leasing Act.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 62-43-103(a), is amended by deleting the language of subdivision (4) in its entirety and by substituting instead the following language:

Commissioner means the commissioner of commerce and insurance or the commissioner's authorized representative.

SECTION 2. Tennessee Code Annotated, Section 62-43-103, is amended by deleting the text of subsection (b) in its entirety and adding the following language:

() Notwithstanding any other provision of the law to the contrary, employee or staff leasing companies shall not be required to be registered as provided by or comply with the provisions of Section 62-31-201.

SECTION 3. Tennessee Code Annotated, Section 62-43-105, is amended by deleting the text in its entirety and by substituting instead the following language:

Financial information and information related to clients obtained from any applicant or licensee pursuant to the administration of this chapter, except to the

extent necessary for proper enforcement and administration of this chapter, shall be confidential and shall not be published or open to inspection by the public.

SECTION 4. Tennessee Code Annotated, Section 62-43-106, is amended by deleting the language “within a twelve-month period”.

SECTION 5. Tennessee Code Annotated, Section 62-43-108(a), is amended by deleting the language “not to exceed two hundred fifty dollars (\$250.00)” and by inserting a period after the language “nonrefundable application fee”.

SECTION 6. Tennessee Code Annotated, Section 62-43-108(b)(1), is amended by deleting the second sentence in (G) in its entirety.

SECTION 7. Tennessee Code Annotated, Section 62-43-108(c), is amended by deleting the subsection in its entirety and substituting instead the following language:

Upon payment of all requisite fees, the commissioner shall license by reciprocity a nonresident applicant which is licensed as a staff leasing company or staff leasing group and in good standing in the applicant’s state of domicile or residence under the following conditions:

(1) the requirements to obtain a license in the applicant’s state of domicile or residence are the same or substantially similar to the requirements to obtain a license in this state;

(2) the applicant’s state of domicile or residence grants the same or similar reciprocity privileges to staff leasing companies and groups who reside in or are domiciled in and licensed by this state; and

(3) the applicant demonstrates that it meets all requirements to obtain a license in this state with the exception of subdivision (b)(3).

SECTION 8. Tennessee Code Annotated, Section 62-43-108(d), is amended by redesignating the current subsection (d) as (e), redesignating the remaining subsections appropriately and substituting the following language as (d):

A nonresident applicant for a license by reciprocity shall be exempt from demonstrating that it meets the requirements of subdivision (b)(3) if the applicant is licensed and in good standing in its state of domicile. The applicant shall be required to demonstrate that it meets all other licensure requirements.

SECTION 9. Tennessee Code Annotated, Section 62-43-109(b), is amended by deleting the existing language in its entirety and by substituting the following language:

The commissioner shall furnish the applicant with a written statement of the reason(s) for denying the applicant's initial application. The applicant shall have sixty (60) days from the date appearing on the written statement of denial to submit proof that the reason(s) for denial has been cured, provided that it is the commissioner's decision as to whether or not the defect(s) has been cured and whether or not to issue the license.

SECTION 10. Tennessee Code Annotated, Section 62-43-109, is amended by deleting subsection (c) in its entirety.

SECTION 11. Tennessee Code Annotated, Section 62-43-110(a), is amended by deleting the language "unless revoked," from the first sentence.

SECTION 12. Tennessee Code Annotated, Section 62-43-110, is amended by deleting the second sentence of subsection (a).

SECTION 13. Tennessee Code Annotated, Section 62-43-110(b), is amended by deleting the text in its entirety and substituting the following paragraph:

At least thirty (30) days prior to the expiration of its license, the licensee shall submit an application for renewal of a license on a form prescribed by the commissioner accompanied by the renewal fee established by the commissioner.

Licenses shall be subject to late renewal for a period of up to six (6) months following their expiration date by payment of the renewal fee plus a penalty as set by the commissioner for each month or fraction of a month which elapses before payment is tendered.

SECTION 14. Tennessee Code Annotated, Section 62-43-111, is amended by deleting the language of subsection (a) in its entirety and substituting instead the following language:

The fee for an unrestricted initial license shall be not less than one hundred dollars (\$100.00) for resident and nonresident staff leasing companies and not less than one hundred fifty dollars (\$150.00) for resident and nonresident staff leasing groups. The fee for the renewal of such license shall be not less than one hundred dollars (\$100.00) for resident and nonresident staff leasing companies and not less than one hundred fifty dollars (\$150.00) for resident and nonresident staff leasing groups.

SECTION 15. Tennessee Code Annotated, Section 62-43-111, is amended by deleting the text of subsection (d) in its entirety and substituting the following language:

Application fees for an initial license or a renewal thereof shall be submitted at the time of application and made payable to the state of Tennessee. Application fees shall be nonrefundable.

SECTION 16. Tennessee Code Annotated, Section 62-43-112, is amended by deleting the language "for up to twelve (12) months," in the first sentence of subsection (a).

SECTION 17. Tennessee Code Annotated, Section 62-43-112, is amended by deleting the text of subsection (c) in its entirety and by substituting the following language:

(c) The provisions of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5, shall govern all matters and procedures regarding the hearing and judicial review of any contested case, as defined therein, arising under this chapter.

SECTION 18. Tennessee Code Annotated, Section 62-43-112, is amended by adding the following new subsection:

() Upon suspension or revocation of a license, the commissioner shall as soon as is practicable:

- (1) Notify the Tennessee department of labor; and
- (2) Notify each client of which the commissioner has knowledge of the licensee's revocation or suspension.

SECTION 19. Tennessee Code Annotated, Section 62-43-112, is amended by adding the following new subsection:

() Upon the suspension or revocation of a license, the holder of the revoked or suspended license shall:

- (1) Immediately cease soliciting clients for staff leasing services;
- (2) Not execute additional contracts or enter into any arrangement wherein it agrees to provide staff leasing services; and
- (3) Wind down the operations of the staff leasing entity so that the staff leasing entity will no longer be in operation sixty (60) days after the effective date of the revocation or suspension.

SECTION 20. Tennessee Code Annotated, Section 62-43-113, is amended by deleting subsections (c) and (d) in their entirety, by deleting from subsection (b) the text of subdivision (3), and by inserting the following language as new subsections (c) and (d):

(c) A licensed staff leasing company shall:

(1) Ensure that its Tennessee employees are covered by workers' compensation insurance provided in accordance with Title 50 and the applicable Tennessee insurance laws and regulations.

(2) Provide to the commissioner, before issuance of any license pursuant to this chapter, evidence of workers' compensation coverage for all leased employees in this state who are subject to the Tennessee Workers' Compensation Law.

(3) Notify the commissioner and its clients within ten (10) days of any notice of cancellation of its workers' compensation coverage.

(4) Notify the commissioner, and its workers' compensation carrier, if applicable, of the termination of the staff leasing company's relationship with any client to which employees within this state are assigned.

(d)(1) A staff leasing company may sponsor and maintain employee benefit and welfare plans for the benefit of its leased employees. Any of those plans which are plans of insurance must comply with the applicable provisions of the insurance laws of this state.

(2) An applicant or licensee shall disclose to the commissioner, to each client company and to all eligible leased employees the following information relating to any benefit plan of insurance provided for the benefit of its leased employees:

(A) The type of coverage and a copy of the insurance policy or certificate or summary plan description;

(B) The identity of each insurer for each type of coverage;

(C) The amount of benefits for each type of coverage and to whom or on whose behalf benefits will be paid; and

(D) The policy limits on each insurance policy.

(3)

(A) There is hereby established a committee to adopt a plan establishing the criteria for a staff leasing company sponsoring and maintaining a plan of self-insurance for health benefits. The committee, appointed by the commissioner, shall be composed of six (6) persons, at least two (2) of whom shall be from the staff leasing business. The department of commerce and insurance shall provide personnel, services, information and other assistance to the committee as needed to make its recommendations.

(B) The plan adopted by the study committee shall be filed with the commissioner on or before January 1, 1998.

(C) Within thirty (30) days the commissioner shall approve such plan for self-insurance, unless the commissioner, after due notice and hearing, shall determine that such plan is not in the public interest.

(D) Any licensed staff leasing companies which have established self-insured health benefit programs prior to January 1, 1998 shall have until July 1, 1998 to either come into compliance with any approved plan criteria or obtain insurance coverage for their leased employees.

(4) Nothing herein shall require a staff leasing company to provide comparable benefits to leased employees located at different worksites.

SECTION 21. Tennessee Code Annotated, Section 62-43-113(e)(3), is amended by deleting the text “employer’s liability” from the first sentence and “employer’s liability,” from the second sentence.

SECTION 22. Tennessee Code Annotated, Section 62-43-115(b), is amended by deleting the text of subdivision (3) and by substituting the following language:

(3) Impose a civil penalty of up to one thousand dollars (\$1,000.00) for each set of facts constituting a separate violation.

SECTION 23. Tennessee Code Annotated, Section 62-43-116, is amended by deleting the text of subsection (a) in its entirety and substituting the following language:

The commissioner may impose civil penalties of up to one thousand dollars (\$1,000.00) per occurrence upon any person who engages in the business of or acts as a staff leasing company without a license or upon any person who otherwise violates the provisions of this chapter or any rules promulgated by the commissioner pursuant to this chapter.

SECTION 24. Tennessee Code Annotated, Title 62, Chapter 43, is amended by adding the following as a new section:

SECTION _____. For the purposes of any tax levied on gross receipts by this state or any county, municipality, or other political subdivision within this state, the term "gross receipts" shall mean with respect to a staff leasing company, the amount of administrative fees received by the staff leasing company, rather than the gross charges of the staff leasing company to its clients which gross charges include wages and payroll taxes thereon. In the event the staff leasing company fails to establish the amount of its administrative fees to the satisfaction of the taxing entity, then the staff leasing company's gross receipts shall be deemed to be the excess of its gross charges or billings over its cost of wages and actual payments to third parties for payroll taxes, workers' compensation and employee benefits.

SECTION 25. This act shall take effect upon becoming a law, the public welfare requiring it.

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